No. 80-1084

IN THE

Supreme Court of the United States

October Term, 1980

MOUNTAIN STATES LEGAL FOUNDATION, et al.,
Petitioners,

versus

DOUGLAS M. COSTLE, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM OF THE STATE OF COLORADO OPPOSING CERTIORARI

J. D. MacFARLANE
Attorney General

RICHARD F. HENNESSEY
Deputy Attorney General

MARY J. MULLARKEY
Solicitor General

JANICE L. BURNETT
Assistant Attorney General
Natural Resources Section

LAWRENCE A. DeCLAIRE
Assistant Attorney General
Natural Resources Section

Attorneys for State of Colorado

1525 Sherman Street, 3d Floor
Denver, Colorado 80203
Telephone: 839-3611

Cases

Page

DeFunis v. Odegaard, 416 U.S. 312 (1974) 3
Sosna v. Iowa, 419 U.S. 393 (1975) 3

Statutes

Page

C.R.S. 1973, article 4 of title 42, 1980
Colo. Sess. Laws; ch. 169.....3
42 U.S.C. §7607.....2
42 U.S.C. §7410(a)(2)(I) 2
42 U.S.C. §7506(a) and 7616 2-3
42 U.S.C. §7502(b)(11)(B).....3

Other

Page

44 Fed. Reg. 57401 (1979) 2
44 Fed. Reg. 57410 (1979) 2
44 Fed. Reg. 57427, 57428 (1979).....2
45 Fed. Reg. 21634 (1980) 3
45 Fed. Reg. 47682-85 (1980) 3
45 Fed. Reg. 7801, 7802 (1980).....2

No. 80-1084

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

MOUNTAIN STATES LEGAL FOUNDATION, A non-profit corporation on behalf of its members who are citizens of the State of Colorado; THE FOLLOWING MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF COLORADO IN THEIR RESPECTIVE OFFICIAL CAPACITIES AS INDIVIDUALLY ELECTED LEGISLATORS OF THE STATE OF COLORADO: Senator FRED E. ANDERSON; Senator DAN D. NOBLE; Senator L. DUANE WOODARD; Senator DONALD A. SANDOVAL; Representative ROBERT F. BURFORD; Representative JOHN G. HAMLIN; Representative W. H. (BILL) BECKER; Representative BOB LEON KIRSCHT; Representative CARL B. BLEDSOE; Representative C. MICHAEL CALLIHAN; Senator RALPH A. COLE; Representative FRANK DE FILIPPO; Representative STEVEN J. DURHAM; Representative CARL H. GUSTAFSON; Representative WILLIAM F. HILSMEIER; Senator DON MacMANUS; Representative JOHN R. McELDERRY; Representative RAY POWERS: Representative FRANK H. RANDALL; Representative PAUL D. SCHAUER; Representative BEV SCHERLING; Representative JAMES M. SHEPARD; Representative CARL E. SHOWALTER; Representative A. J. (MICK) SPANO; Representative KATHY SPELTS; Representative NICK THEOS; and the STATE OF COLORADO ex rel. MOUNTAIN STATES LEGAL FOUNDATION,

Petitioners,

v.

DOUGLAS M. COSTLE, in his official capacity as Administrator of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ROGER L. WILLIAMS in his official capacity as Regional Administrator of Region VIII of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY: AND THE STATE OF COLORADO ex rel. J. D. MacFARLANE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM OF THE STATE OF COLORADO OPPOSING CERTIORARI

For the reasons discussed in this memorandum, the State of Colorado respectfully requests that the petition for writ of certiorari be denied because the issues presented are moot.

This case arose out of the petition of Mountain States Legal Foundation and others to the Tenth Circuit Court of Appeals pursuant to section 307 of the Clean Air Act, 42 U.S.C. §7607, for judicial review of final rulemaking of the United States Environmental Protection Agency (EPA) conditionally approving portions of Colorado's State Implementation Plan (SIP) on October 5, 1979 (44 Fed. Reg. 57401(1979)) (See Pet. 31a-50a).

As part of said final rulemaking, EPA granted conditional approval to the Denver element of the Colorado SIP as pertains to control strategies for ozone and to the Denver, Colorado Springs, and Larimer-Weld elements of the SIP as pertain to control strategies for carbon monoxide on condition that the plan be revised to include "an adequate vehicle emissions control inspection/maintenance program". 44 Fed. Reg. 57410 (1979). Elsewhere in the same Federal Register, EPA proposed deadlines by which various conditions would have to be met to secure approval of those elements of the SIP which had received conditional approval. These proposed deadlines included a March 1, 1980 date for submission to EPA of legislation and schedules for implementation of an adequate vehicle emissions control inspection/maintenance program. 44 Fed. Reg. 57427, 57428 (1979). The proposed deadline of March 1, 1980 for submission of an inspection/maintenance program was finalized by EPA rulemaking on February 5, 1980. 45 Fed. Reg. 7801, 7802 (1980).

The State of Colorado failed to meet the March 1, 1980 deadline. On March 14, 1980, EPA published a final rule (1) disapproving the ozone (Denver) and carbon monoxide (Denver, Colorado Springs, and Larimer-Weld) control portions of the Colorado SIP and (2) imposing (a) restrictions on construction of major new or modified stationary sources in the affected ozone and carbon monoxide non-attainment areas pursuant to section 110(a)(2)(I) of the Clean Air Act, 42 U.S.C. §7410(a)(2)(I), and (b) a limitation of certain federal assistance under sections 176(a) and 316 of the Act, 42 U.S.C. §§7506(a) and

7616. On March 13, 1980 at the hearing on the petition for review of the October 5, 1979 rulemaking, the court below stayed EPA enforcement of such "sanctions" until May 2, 1980. In response to the court's order, EPA amended its final rule to postpone the effective date of its March 14, 1980 action until May 2, 1980 (45 Fed. Reg. 21634 (April 2, 1980)), when the sanctions took effect.

On May 7, 1980, the Colorado General Assembly adopted Senate bill 52 (codified as part of article 4 of title 42, C.R.S. 1973; 1980 Colo. Sess. Laws, ch. 169) establishing an inspection/maintenance program for Colorado. On May 23, 1980 Governor Richard D. Lamm signed the bill into law and on May 29, 1980, the state submitted the bill to EPA together with supporting documentation, including detailed schedules for implementation.

After reviewing the submittal, on July 10, 1980 (effective July 16, 1980), EPA approved the automobile exhaust emissions control program for inclusion in the Colorado SIP and removed the federal funding and stationary source construction restrictions. 45 Fed. Reg. 47682-85 (July 16, 1980). The July 16, 1980 EPA rulemaking is included herein as Appendix A.

The issues raised by petitioners no longer present "a live controversy." Colorado has adopted an automobile exhaust emissions control inspection/maintenance program and EPA has approved that program as meeting the requirements of section 172(b)(11)(B) of the Clean Air Act, 42 U.S.C. §7502(b)(11)(B), and has acted to (unconditionally) approve the Colorado SIP and to remove sanctions. The State of Colorado is not now subject to sanctions nor is it subject to having to meet any conditions in order to avoid the imposition of sanctions. Because they are no longer live, the issues concerning the propriety of EPA's October 5, 1979 conditional approval of the Colorado SIP and imposition of sanctions under the Clean Air Act are moot. *Sosna v. Iowa*, 419 U.S. 393 (1975); *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

J. D. MacFARLANE
Attorney General

RICHARD F. HENNESSEY
Deputy Attorney General

MARY J. MULLARKEY
Solicitor General

JANICE L. BURNETT
Assistant Attorney General
Natural Resources Section

LAWRENCE A. DeCLAIRE
Assistant Attorney General
Natural Resources Section

Attorneys for State of Colorado

1525 Sherman Street, 3d Floor
Denver, Colorado 80203
Telephone: 839-3611

APPENDIX A

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1539-2]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: Effective May 2, 1980 (45 FR 16486 and 45 FR 21634), the carbon monoxide and ozone portions of the Colorado State Implementation Plan (SIP) were disapproved by the Environmental Protection Agency (EPA) because of the State's failure to adopt and submit an acceptable automobile exhaust emissions control program. This disapproval action invoked the stationary source construction restrictions required by Section 110(a)(2)(I) of the Clean Air Act. At the same time, EPA began exercising its authority under Sections 176(a) and 316 of the Act to withhold certain federal assistance from the affected nonattainment areas.

On May 29, 1980, the Governor submitted written evidence of the State's legal authority to implement and enforce an automobile emissions control program as well as schedules for implementing that program and a demonstration that it will achieve a 25% reduction in exhaust emissions by 1987. Today, EPA is approving this element of the SIP and is removing the funding and construction restrictions which are currently in effect.

EFFECTIVE DATE: July 16, 1980.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final rulemaking is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by September 15, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the

subject of today's notice may *not* be challenged later in the civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3471.

SUPPLEMENTARY INFORMATION: EPA finds good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) implementation plan revisions are already in effect under state law and EPA poses no additional regulatory burden, (2) EPA has a responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979, or as soon thereafter as possible, and (3) this action removes federal funding and construction restrictions which have been in effect in certain nonattainment areas in Colorado since May 2, 1980.

Background

On January 2, 1979, the Governor of Colorado submitted a State Implementation Plan (SIP) revision in response to the requirements of Part D of the Clean Air Act (the "Act"), as amended in 1977. In general, the SIP is required to provide for the attainment and maintenance of the national ambient air quality standards for all areas which have been designated "nonattainment" pursuant to Section 107 of the Act. A critical portion of the control strategy for attainment and maintenance of the carbon monoxide and ozone standards, in portions of Colorado, is the implementation of an inspection and maintenance program. "Inspection/Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Noncomplying vehicles can be prohibited from operating by requiring proof of compliance to purchase license plates or to register a vehicle. In certain cases, a windshield sticker system can be used, much like many safety inspection programs.

Section 172 of the Clean Air Act requires that State Implementation Plans which include nonattainment areas meet certain criteria. These criteria have been discussed in detail in the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, 44 FR 20377 (April 4,

1979), and its various supplements, 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), and 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). For areas which demonstrate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982, despite the implementation of all reasonably available measures, an extension up to 1987 may be granted. In such cases, Section 172(b)(11)(B) requires that: "the plan provisions shall establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program. . . ." In Colorado the areas which are required to have an I/M program are portions of Larimer, Weld, Adams, Arapahoe and El Paso Counties, and the Counties of Denver, Boulder, Douglas, and Jefferson.

EPA issued guidance on February 24, 1978, on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking (44 FR 20372, 20373, n 6). Although the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

Legal Authority. States or local governments must have adopted the necessary statutes, regulations, ordinances, etc., to implement and enforce the inspection/maintenance program. (Section 172(b)(10).)

Commitment. The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172(b)(10).)

Resources. The necessary finances and resources to carry out the I/M program must be identified and committed. (Section 172(b)(7).)

Schedule. A specific schedule to esstablish the I/M program must be included in the State Implementation Plan. (Section 172(b)(11)(B).) Interim milestones are specified in the July 17, 1978, memorandum in accordance with the general requirement of 40 CFR 51.15(c).

Program effectiveness. As set forth in the July 17, 1978, guidance memorandum, the I/M program must achieve a 25% reduction in passenger car exhaust emissions of hydrocarbons and a 25% reduction for carbon monoxide. This reduction is measured by comparing the levels of emissions projected to December 31, 1987, with and without the I/M program. This policy is based on Section 172(b)(2) which states "the plan

provisions . . . shall . . . provide for the implementation of all reasonably available control measures. . . ."

Specific detailed requirements of these five provisions are discussed below:

To be acceptable, I/M legal authority must be adequate to implement and effectively enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislation can delegate certain decision making to an appropriate regulatory body. For example, a state department of environmental protection or department of transportation may be charged with implementing the program, selecting the type of test procedure as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be included with any plan revision which must include I/M (i.e., a plan which establish an attainment date beyond December 31, 1982) unless approved extension to certify legal authority is granted by EPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a state legislature has had no opportunity to consider enabling legislation.

Written evidence is also required to establish that the appropriate governmental bodies are "committed to implement and enforce the appropriate elements of a plan." (Section 172(b)(10).) Under Section 172(b)(7), supporting commitments for the necessary financial and manpower resources are also required.

A specific schedule to establish an inspection/maintenance program is required. (Section 172(b)(11)(B).) The July 17, 1978, guidance memorandum established as EPA policy the key milestones for the implementation of various I/M programs. These milestones were the general SIP requirement for compliance codified at 40 CFR 51.15(c). This section requires that increments of progress be incorporated for compliance schedules of over one year in length.

To be acceptable an I/M program must achieve the requisite 25% reductions in both hydrocarbons and carbon monoxide exhaust emissions from passenger cars by the end of calendar year 1987. The Act mandates "Implementation of all reasonably available control measures as expeditiously as practicable." (Section 172(b)(2).) At the time of passage of the Clean Air Act Amendments of 1977, several inspection/maintenance programs were already operating. Mandatory programs in New Jersey and Arizona provide for a stringency of approximately 20%. (The stringency of a program is defined as the initial

proportion of vehicles which would have failed the program's standards if the affected fleet had not undergone I/M before. Because some motorists tune their vehicles before I/M tests, the actual proportion of vehicle failing is usually a smaller number than the stringency of the program.) Depending on the program type (private garage or centralized inspection) a mandatory I/M program may be implemented as late as December 31, 1982, and the attainment date may be as late as December 31, 1987. Based on an implementation date of December 31, 1982, and a 20% stringency factor, EPA predicts the reductions of both CO and HC exhaust emissions of 25% can be achieved by December 31, 1987. Earlier implementation of I/M will produce greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with a 20% stringency factor, it is EPA policy to use a 25% emission reduction as the criterion to determine compliance of the I/M portion with Section 172(b)(2).

In an October 5, 1979, final rulemaking on the Colorado SIP (44 FR 57401), EPA stated that the State of Colorado had satisfied the condition for an extension of the deadline for certification of adequate legal authority for a motor vehicle exhaust emissions control program. The reason for the extension was confusion during the 1979 legislative session over the approvability of the Bill under consideration. During the closing days of the 1979 Legislative Session, some of the legislators misunderstood whether EPA could approve the program established in Senate Bill 1 which included a commitment to study alternative approaches to controlling motor vehicle exhaust emissions and pass appropriate additional legislation by March 1, 1980, to meet requirements in the Clean Air Act. Senate Bill 1 also established a motor vehicle exhaust emissions control program which would go into effect automatically if the Legislature did not adopt additional legislation by March 1, 1980. However, in the October 5, 1979, rulemaking EPA indicated that the program established in Senate Bill 1 was not acceptable and noted specific deficiencies (44 FR 57404-57405). EPA conditionally approved this element of the SIP with the provision that the State certify and submit to EPA by March 1, 1980, evidence of adequate legal authority for the required program and corrections to other deficiencies noted in the October 5, 1979, rulemaking. EPA also notified the public of its intention to impose the federal funding and new source constructions restrictions,

authorized by Sections 176(a), 316, and 110(a)(2)(I) of the Act, if the State failed to comply with this condition.

On March 14, 1980 (45 FR 16486), EPA published a final rule disapproving the carbon monoxide and ozone portions of the Colorado State Implementation Plan, thereby invoking the restrictions on construction of major new or modified stationary sources required by Section 110(a)(2)(I) of the Clean Air Act. In that rule, EPA also announced that it would begin exercising its authority under Section 176(a) and 316 of the Act to withhold certain federal assistance from the affected nonattainment areas.

These actions superseded EPA's October 5, 1979, conditional approval of the I/M portion of the SIP and were based on the State of Colorado's failure to satisfy a condition of approval, i.e., failure to submit evidence of adequate legal authority to implement and enforce an acceptable automobile exhaust emissions control program by March 1, 1980. See 44 FR 57401 (October 5, 1979) and 45 FR 7801 (February 5, 1980). The final rule was to be effective on March 14, 1980.

On March 13, 1980, the United States Court of Appeals for the Tenth Circuit ordered that "enforcement by the EPA of all sanctions against the State of Colorado is stayed to and including May 1, 1980." Therefore, EPA amended the final rule to respond to the Court order, and stay the effective date of the action published on March 14, 1980, to May 2, 1980 (45 FR 21634).

On May 2, 1980, the State had not yet adopted legal authority for and automobile exhaust emissions control program. Therefore, the carbon monoxide and ozone portions of the SIP were disapproved and funding and construction restrictions became effective on that date.

State Submittal

On May 7, 1980, the legislature adopted the Bill which is the subject of this notice. On May 23, 1980, Governor Richard Lamm signed the Bill into law and on May 29, 1980, the State submitted the Bill to the EPA together with supporting documentation, including detailed schedules for implementation and a demonstration that the program will achieve a 25% reduction in exhaust emissions by 1987. The supporting documentation represents a commitment by the Departments of Health and Revenue to carry out and enforce the program, and the resources necessary to do so are also identified and committed.

The law calls for annual emissions inspection for 1968 and later model year light duty vehicles including light duty trucks in the Front Range area (basically Denver, Boulder, Colorado Springs, Fort Collins, and Greeley). The Health Department will adopt emissions standards for each model year. Standards will be set so that at least 60% of 1968-1974 vehicles and at least 70% of 1975 and later vehicles can meet the standards.

Cars will be tested using emissions analyzers. If they comply with the standards, they will be issued a certificate of emissions compliance. Model year 1968-1980 vehicles which fail to comply with the standards at the time of testing will be adjusted to manufacturers specifications and then retested. If they still fail to meet standards, they will be issued a certificate of emissions adjustment and no further repairs or maintenance will be required, unless emissions control devices have been altered, removed, disabled or rendered inoperative. Visual inspection of emission control devices will be performed. Owners of model year 1981 and later vehicles which fail to comply with standards at the time of testing will be required to repair their vehicles to meet standards. If these vehicles still fail to meet standards after expending up to $100 on emissions related repair costs, they will be issued a certification of emissions adjustment.

The high altitude performance adjustments provided by Section 215 of the Clean Air Act will be included as part of the adjustments required.

The full program will begin on January 1, 1982, but a change of ownership and voluntary program will begin July 1, 1981. The provisions of the program requiring repairs on 1981 and later model year vehicles will begin July 1, 1982.

The emissions tests and adjustments will be conducted by trained mechanics. The mechanic training and licensing program will be run by the Department of Health and mechanics will have to pass a competency test before being licensed. The Department of Health will also administer an information program to insure public acceptance.

The Department of Health will insure quality control by:

(1) establishing specifications and standards for emissions analyzers and emissions analyzers to be used by inspection stations will have to be approved by the Department;

(2) checking and calibrating the analyzers on a regular basis;

(3) establishing procedures to be used in conducting inspections and performing adjustments; and

(4) periodically sending "unmarked" vehicles through inspection stations to evaluate program effectiveness.

The Department of Health will also continuously evaluate the effectiveness of the program and make annual recommendations to the Legislature regarding needed program improvements. The evaluation will focus particularly on whether a significant number of vehicles are failing to pass the retest after adjustments are made, developing alternative procedures to be followed for repairing 1981 and later vehicles which will not be adjustable and may require repairs or parts replacement to comply with the standards.

Enforcement of the program will be by the Department of Revenue through the safety inspection program. If a vehicle does not have a valid certificate of emissions control at the time of safety inspection, no safety inspection sticker may be issued and the vehicle will be prohibited from operating. Penalty provisions are included. The Department of Revenue will also administer a referee program.

Emissions standards for new vehicles sold at high altitudes have been proposed by EPA, effective with the 1982 model year. The existence of these standards will result in the Colorado I/M program enabling warranty coverage under Section 207(b) of the Clean Air Act. Properly maintained 1982 and later model year vehicles failing inspection will have engine components affecting emissions repaired at the expense of the vehicle manufacturer for the first two years or 24,000 miles. Emission control equipment will be covered for five years or 50,000 miles.

Final Action

On June 13, 1980, (45 FR 40169) EPA proposed approval of the Governor's submittal and solicited comments on this action. One comment was received; however, it did not address the adequacy of the state I/M program, but rather objected to EPA's use of federal funding and stationary source construction restrictions to obtain State compliance.

EPA believes its actions on an adequate I/M program were clearly authorized by Sections 176(a), 316 and 110(a)(2)(I) of the Act. Furthermore, EPA believes the provisions of the Act authorizing such actions are constitutional. Federal funding restrictions are the traditional method used by Congress to gain State cooperation in federal programs. The construction moratorium is an interim prohibition on private pollution sources and is invoked solely for the purpose of protecting public health. EPA's position on these issues are explained in more detail in

briefs and other documents filed by the Agency in the *Mountain States Legal Foundation, et al.,* v *Costle* lawsuit (Case No. 79-2261, U.S. Court of Appeals for the Tenth Circuit).

EPA is approving Colorado's automobile exhaust emissions control program for inclusion in the State Implementation Plan. Today's action supersedes EPA's earlier disapproval of this portion of the SIP, and also removes the federal funding and stationary source construction restrictions authorized by Sections 176(a), 316 and 110(a)(2)(I) of the Act, which have been in effect since May 2, 1980.

Colorado's law provides adequate legal authority to implement and enforce an automobile exhaust emissions control program beginning January 1, 1982. The law also represents a commitment to implement and enforce the program and identifies and commits adequate financial and manpower resources. The detailed schedules provided by the State are also acceptable.

Finally with respect to program effectiveness, the State has demonstrated the required 25% reduction in HC and CO light duty vehicle exhaust emissions in 1987. Much of this emission reduction will come from the inspection and maintenance program for 1981 and later models, which features a 30% stringency with full mechanic training. EPA is concerned about the effectiveness of the adopted adjustment program for pre-1981 models, especially the lack of a substantive requirement to pass the retest. Should the first annual program evaluation indicate a substantial number of these models are failing to pass the retest, compliance with the 25% requirement will be in jeopardy, and the State will have to revise the program accordingly.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110, 176, and 316 of the Clean Air Act as amended.

Dated: July 10, 1980.

Douglas M. Costle,
Administrator.

Title 40, Part 52 of the Code of the Federal Regulation is amended as follows:

Subpart G — Colorado

1. Section 52.320(c)(18) is revised as follows:

§52.320 Identification of Plan.

* * * * *

(c) * * *

(18) On May 29, 1980, the Governor submitted written evidence of the State's legal authority to implement and enforce an automobile emissions control program as well as schedules for implementing that program and a demonstration that it will achieve a 25% reduction in exhaust emissions by 1987.

§52.324 [Amended]

2. In §52.324, paragraph (c) is deleted.

§52.327 [Amended]

3. In §52.327, paragraph (a) 1. is deleted.

§52.328 [Amended]

4. In §52.328, paragraph (a) 1. is deleted.